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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 162

PHILLIPS PETROLEUM COMPANY, A CORPORATION,
Petitioner,

vs.

C. F. GREEN, AS CHAIRMAN OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW AND INDIVIDUALLY, AND D. L. MORROW AND FRED W. NELSON, AS MEMBERS OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW AND INDIVIDUALLY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Counsel for Petitioner.

WALTER L. BARNES,
PAUL J. PARKER,
Of Counsel.

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No. 162

PHILLIPS PETROLEUM COMPANY, A CORPORATION,
Petitioner and Appellee below,

vs.

C. F. GREEN, AS CHAIRMAN OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW AND INDIVIDUALLY, AND D. L. MORROW AND FRED W. NELSON, AS MEMBERS OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW AND INDIVIDUALLY,

Respondents and Appellants below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Your petitioner respectfully shows:

I.

Summary Statement of Matter Involved.

This case presents the scope and effect of the recent decision of this Court in *Railroad Commission of Texas, et al.* v. *Pullman Company, et al.* (decided March 3, 1941), 312 U. S. —, 61 S. Ct. 643, 85 L. Ed. 580 (Adv. Op.).

The District Court for the Southern District of Iowa permanently enjoined the members of the Iowa State Board of Assessment and Review from assessing and collecting from petitioner retail chain store taxes in respect to certain gasoline and oil bulk storage stations operated by petitioner in the State of Iowa, on the ground that petitioner had not conducted a business by a system of retail chain stores within the meaning of the Iowa Chain Store Tax Act [1] (R. 336-347; 34 Fed. Sup. 30). On appeal, the Eighth Circuit Court of Appeals held that under the authority of *Railroad Commission, et al.* v. *Pullman Company, et al., supra,* owing to the absence of a decision by an Iowa State Court of the question of State law involved, the District Court could not determine the issue presented to it and that the Circuit Court of Appeals had no alternative other than to reverse and remand the case with instructions to retain the bill until the same issues could be determined by a State court in appropriate proceedings; and it was so ordered (R. 359-366).

Originally, the suit was instituted by Standard Oil Company of Indiana on May 28, 1936, against the Iowa State Board of Assessment and Review in the United States District Court for the Southern District of Iowa, seeking an injunction against the enforcement of the Act as against Standard's bulk storage plant operations. Jurisdiction was predicated upon diversity of citizenship and Federal constitutional questions (R. 1-10). On the same day, petitioner, a Delaware corporation, together with twelve other nonresident oil companies, intervened, requesting similar relief (R. 10-12). A temporary injunction was issued (R. 12-13). On February 7, 1940, the complaints of Standard Oil Company and the intervenors were amended to seek injunctive

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[1] Chap. 75, 46th G. A. of Iowa, H. F. 311, now Chap. 329.5, § 6943.126, et seq., Code of Iowa, 1939, approved April 29, 1935, effective May 8, 1935. See Ex. 91, R. 315-326.

relief against the application of the Act to retail service stations operated by lessees of the complainant and intervenors, respectively (R. 20-22). On February 10, 1940, a consent decree was entered by a statutory three-judge court, determining the tax liability of all parties to the action and ruling that the gross receipts tax was unconstitutional [2] and the unit tax was constitutional [3] (R. 22-30). By the terms of the consent decree the Board was permanently enjoined from assessing or collecting the chain store taxes as against operations of certain retail service stations by lessees of complainant and intervenors, respectively (R. 27-28). Said consent decree further adjudged that complainant and intervenors were liable for such chain store taxes on certain bulk plant operations and were not liable for such taxes on certain other bulk plant operations, and as to the latter a permanent injunction was granted. Jurisdiction was reserved by the court for the settlement of any controversy concerning the number of units to be taken for bases of tax liability and for the determination of the issue of the applicability of the Act to certain bulk storage plants of petitioner, Phillips Petroleum Company, at which a "wholesale driver" plan of operation was in effect, the latter question to be determined "independently of the provisions" of the consent decree, upon evidence to be submitted (R. 29-30).

Trial of the issue reserved with respect to liability of Phillips Petroleum Company for chain store taxes in respect to its bulk plants at which the wholesale driver plan of operation was in effect opened before the statutory three-judge court on May 29, 1940. The court thereupon, upon the admission of counsel for the Board, decided that the

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[2] *Great Atlantic and Pacific Tea Company* v. *Valentine, et al.*, 12 F. Supp. 760; *Valentine, et al.* v. *Great Atlantic and Pacific Tea Company*, 299 U. S. 32, 57 S. Ct. 56, — L. Ed. —.

[3] *Tolerton & Warfield Company* v. *Iowa State Board of Assessment and Review, et al.*, 222 Iowa. 908, 270 N. W. 427.

gross receipts provision of the Act was unconstitutional[4] (R. 330-336). Thereupon, the three-judge court announced that it had lost jurisdiction, because no constitutional question remained, and assigned the cause to the district judge for further proceedings (R. 332, 334). After a trial the district court ruled that petitioner was not conducting a business by a system of chain stores with respect to its operation of the bulk plants under consideration, within the meaning of the Chain Store Tax Act, and permanently enjoined the Board from assessing and collecting such taxes (R. 336, 347). This decree was reversed by the Eighth Circuit Court of Appeals other than on the merits, as related in the second paragraph hereof.

II.

Statement of Basis of Jurisdiction.

A. The statutory provision believed to sustain the jurisdiction of this Court is Act of Congress, March 3, 1891, c. 517, § 6, 26 Stat. 828; March 3, 1911, c. 231, § 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, § 1, 43 Stat. 938; Judicial Code, § 240 amended; U. S. C., Title 28, § 347.

B. The date of the decree to be reviewed is May 9, 1941 (R. 359). No petition for rehearing was filed and order staying mandate was entered on May 17, 1941 (R. 367). This petition for writ of certiorari was filed on June 13, 1941.

C. The decree to be reviewed was entered in a civil action in the United States Circuit Court of Appeals for the Eighth Circuit which reversed the granting to petitioner of injunctive relief aaginst application of Iowa Chain Store Tax Act to its Iowa bulk storage plant operations by the trial court, without a decision on the merits, and re-

[4] It had previously been so decided by this Court. *Valentine, et al.* v. *Great Atlantic & Pacific Tea Company,* 299 U. S. 32.

manded it for institution of proceedings in Iowa State courts. Therefore, it is competent for this Court, upon the petition of any party thereto, to require by certiorari after decree by said Circuit Court of Appeals that the cause be certified to this Court for determination by it with the same power and authority and with like effect as if the cause had been brought to this Court by unrestricted appeal.

D. The cases believed to sustain said jurisdiction are as follows:

American Construction Company v. *Jacksonville, T. & K. W. R. Company,* 148 U. S. 372;
United States v. *The Three Friends,* 166 U. S. 1;
Forsyth v. *City of Hammond, et al.,* 166 U. S. 506.

E. Copies of the opinions of the Circuit Court of Appeals for the Eighth Circuit and of the United States District Court for the Southern District of Iowa appear at pages 359 and 336 of the record, respectively.

III.

Questions Presented.

1. Is a Federal equity court required to stay its hand and remit the parties to a State court, in an action by a citizen of one State seeking to enjoin State tax officials, citizens of another State, from assessing and collecting taxes under a State chain store tax statute, where the sole issue is the proper interpretation and application of a State taxing statute, which question has not been passed upon by the State courts, and where the only remedy available in a State court is an equity action to enjoin the collection of the tax?

2. In the event the answer to the preceding question should be in the affirmative, does the same rule apply where the action originated as a suit by one party in which a num-

ber of others similarly situated intervened and sought the same relief, the issues related both to the interpretation and application of a State statute and the validity of the State statute under the Federal constitution, and where, by consent decree, a three-judge court has decided all of the issues between most of the parties and has reserved for decision upon a trial one of the issues raised by one of the parties, which issue relates solely to the interpretation and application of the State taxing statute?

IV.

Reasons Relied Upon for Allowance of Writ of Certiorari.

1. The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

2. The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court, to-wit: whether or not Federal courts of equity are hereafter required to decline to interpret and apply a State taxing statute in the absence of an authoritative State court decision.

3. The Circuit Court of Appeals has rendered a decision in conflict with decisions of other circuit courts of appeal on the same matter.

V.

The Record.

Your petitioner presents to this Court and files herewith as an exhibit hereto a certified transcript of the entire record in the case, including the proceedings in the Circuit Court of Appeals for the Eighth Circuit.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the

United States Circuit Court of Appeals for the Eighth Circuit ordering said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals for the Eighth Circuit had in Case Number 11873 Civil on its docket, entitled *C. F. Green, as Chairman of the Iowa State Board of Assessment and Review, etc., et al., appellants,* v. *Phillips Petroleum Company, appellee,* to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States and the rules of this Court; that the decree of said Circuit Court of Appeals herein be reversed by this Court and the petitioner have such further relief as to this Court may seem proper.

Dated June 12th, 1941.

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